

1 MELANIE D. MORGAN, ESQ.
2 Nevada Bar No. 8215
3 THERA A. COOPER, ESQ.
4 Nevada Bar No. 13468
5 **AKERMAN LLP**
6 1160 Town Center Drive, Suite 330
7 Las Vegas, NV 89144
8 Telephone: (702) 634-5000
9 Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
thera.cooper@akerman.com

7 *Attorneys for The Bank of New York Mellon fka*
8 *The Bank of New York Successor Trustee to*
JPMorgan Chase Bank, N.A., as Trustee for the
Structured Asset Mortgage Investments II Trust,
Mortgage Pass-Through Certificates, Series 2005-AR8

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 THE BANK OF NEW YORK MELLON FKA THE
13 BANK OF NEW YORK SUCCESSOR TRUSTEE
14 TO JPMORGAN CHASE BANK, N.A., AS
15 TRUSTEE FOR THE STRUCTURED ASSET
MORTGAGE INVESTMENTS II TRUST,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-AR8,

16 Plaintiff,
17 vs.

18 DESERT SHORES COMMUNITY ASSOCIATION;
19 PREMIER ONE HOLDINGS INC.; AND NEVADA
ASSOCIATION SERVICES, INC.

20 Defendants.

Case No.: 2:16-cv-01564-JCM-PAL

**STIPULATION TO EXTEND TIME
TO RESPOND TO DESERT SHORE'S
COMMUNITY ASSOCIATION'S
MOTION TO DISMISS [ECF NO. 11]**

[First Request]

21 Plaintiff the Bank of New York Mellon fka The Bank of New York Successor Trustee to
22 JPMorgan Chase Bank, N.A., as Trustee for the Structured Asset Mortgage Investments II Trust
23 Mortgage Pass-Through Certificates Series 2005-AR8 (**BNYM**) and Defendant Desert Shores
24 Community Association (**Desert Shores**) stipulate and agree to extend the time for BYNM to
25 respond to Desert Shores' motion to dismiss BNYM complaint [ECF NO. 11] filed December 30,
26 2016 to February 3, 2017. No hearing has been set for Desert Shores' motion to dismiss [ECF NO.
27 11].

1 BNYM's response was due on January 10, 2017. Pursuant to LR IA 6-1 BYNM asserts it was
2 unable to file the motion or stipulation by the deadline due to excusable neglect. Desert Shores filed
3 two different motions to dismiss ECF Nos. 11 and ECF no. 13. BYNM filed its response to ECF
4 No. 13 on January 6, 2017 not realizing a second motion to dismiss was pending due a calendaring
5 error caused by the two similarly titled motions. The Ninth Circuit has held that excusable neglect
6 encompasses situations in which the failure to comply with a filing deadline is attributable to
7 negligence. *Lemoge v. U.S.*, 587 F.3d 1188, 1195 (9th Cir.2009). There are at least four factors in
8 determining whether neglect is excusable: (1) the danger of prejudice to the opposing party; (2) the
9 length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4)
10 whether the movant acted in good faith. *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th
11 Cir.2000) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993)).
12 The determination of whether neglect is excusable is ultimately an equitable one, taking account of
13 all relevant circumstances surrounding the party's omission. *Pioneer*, 507 U.S. at 395. This equitable
14 determination is left to the discretion of the district court. *Pincay v. Andrews*, 389 F.3d 853, 860 (9th
15 Cir.2004).

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AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

Here, all four *Pioneer* factors weight in favor of BNYM. First, Desert Shores will not be prejudiced by the delay in the filing of the response. Second, the length of the delay was merely two days, and does not impact the proceedings. Third, while a calendaring error is a weak justification for an attorney's delay, the Ninth Circuit has previously found this type of mistake to be excusable neglect. *See Pincay*, 389 F.3d at 860. Finally, there is no indication that BNYM failure to file the response was the result of bad faith.

DATED: January 12, 2017.

AKERMAN LLP

LEACH JOHNSON SONG & GRUCHOW

/s/ Thera Cooper

/s/ Ryan Hastings

MELANIE MORGAN, ESQ.
Nevada Bar No. 8215
THERA A. COOPER, ESQ.
Nevada Bar No. 13468
1160 Town Center Drive, Suite
Las Vegas, Nevada 89144

SEAN L. ANDERSON, ESQ.
Nevada Bar No. 7259
RYAN D. HASTINGS, ESQ.
Nevada Bar No. 12394
8945 W Russell Road, Suite 3
Las Vegas, Nevada 89148

*Attorneys for The Bank of New York Mellon fka
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2005-AR8*

Attorneys for Desert Shores Community Association

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

DATED January 13, 2017